Supreme Court, U.S.
FILED

011330 MAR - 4 2002

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No.

In The

Supreme Court of the United States

S. Christopher Anderson
Petitioner

v.

Ohio State University et al

On Petition for Writ of Certiorari
To the U.S. Court of Appeals, Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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Petitioner, Pro-Se
1611 Valley Forge Drive
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3/1/02

QUESTIONS PRESENTED FOR REVIEW

This case presents critical issues for citizens who may be affected by matters of civil rights, constitutional duty, and due process. All American citizens are potentially affected.

1. Should the court have denied discovery and review by the trier of fact regarding claims of due process violations by a tenured professor with uncontested substantive rights, and did the court's decision show proper respect for constitutional due process rights?
2. Should constitutional due process be replaced by a school procedure that erodes the intent of our constitutional protection, and should a substitute procedure then be violated without accountability?
3. Do genuine issues of disputed material fact support resolution by the trier of fact?
4. Was a tenured professor, facing the worst possible sanction, afforded adequate and reasonably fair pre-termination procedure, and should pleadings and evidence of tainted and sham procedure create genuine issue of disputed material fact?
5. Was a professor given proper notice of the grounds for his dismissal when there was no record of a "standard of conduct" prohibiting his actions, and if he pled and offered clear evidence denying said actions, should trial court have decided disputed material fact.
6. Should school employees be answerable for alleged arbitrary and capricious deprivation which violated professor's tenure rights of which a reasonable person should have known, and should said pled behavior suggest genuine issue of disputed material fact?
7. Should alleged suspect motives and intent of school employees be venue of trial judge or trier of fact?
8. Should XIth Amendment language be misinterpreted to permit immunity for those constitutionally bound to be accountable, and should citizens be granted immunity from suit by other citizens of the same state?

Names of Parties

Ohio State University, Judy Schurtz, David Andrews, Helen Ninos, Nancy Rudd, Karen Bieri, Jo Jones, Lou Fourman, Chuck Bell, Keith Smith, Richard Sisson, Robert Moser, Dale Safrit, Nicola Eyre, Lanny Anderson, Nikki Conklin, David Goldberger, William Saam, Steven Weisbrode, Robert Bornstein, E. Gordon Gee.

Corporate Disclosure Statement

The petitioner is not a corporate entity.

TABLE OF CONTENTS

Page

Table of Cited Authorities v

Statement of the Case and Facts vi

Arguments 1

1. Plaintiff's substantive rights were due Constitutional due process and it was error to grant him substandard and tainted procedure when grievous loss and numerous disputed issues were implicated. 1

2. Genuine issues of disputed material facts preclude summary judgment and genuine issues are best decided by trier of fact. Sham school procedures that dismiss tenured professor preclude summary judgment. Plaintiff was due adequate and reasonably fair hearing in the face of the worst possible sanction for trivial acts. Summary judgment should not be granted when questions of a) tainted and sham procedure, b) improper motive and intent, c) arbitrary and capricious deprivation, etc. must be decided by a jury. 3

3. Immunity is not a defense for school employees who violate, under color of law, clearly established Constitutional rights of which a reasonable person would have known. At three different levels, the Constitution of the United States, as supreme law of land, requires that states be answerable to their own citizens and that a citizen may bring suit against another citizen. 14

Conclusion 25

Appendix A1

TABLE OF CITED AUTHORITIES

U.S. CONSTITUTIONAL LAW, STATUTES, ETC.	Page
Declaration of Independence of the United States	passim
Constitution of the United States, Preamble	6,17
Constitution of the United States, Article III § 2	passim
Constitution of the United States, Article VI, clause 2	passim
Constitution of the United States, First Amendment	4,19
Constitution of the United States, Fourth Amendment	1
Constitution of the United States, Fifth Amendment	1, 14
Constitution of the United States, Sixth Amendment	6, 24
Constitution of the United States, Seventh Amendment	6
Constitution of the United States, Eighth Amendment	2
Constitution of the United States, Tenth Amendment	18, 19
Constitution of the United States, Eleventh Amendment	passim
Constitution of the United States, Fourteenth Amendment	"
42 U.S.C. § 1983	1, 18
CASES	
Adickes v. S.H. Kress & Co.	1
Anderson v. Liberty Lobby, Inc.	4
Beitzell v. Jeffrey	8
Bishop v. Wood	2
Board of Regents v. Roth	2
Brown v. Texas A&M University	3
Crook v. Baker	7
Edelman v. Jordan	15, 16
Goldberg v. Kelly	9
Goss v. Lopez	7
Green v. Board of Regents of Texas Tech University	3
Greene v. McElroy	11
Lassiter v. Department of Social Services	8
Leonard v. Dixie Well Service & Supply, Inc.	4
McCann v. Ruiz	passim
Slochower v. Board of Education of New York	3
Thompson v. Southwest School District	5
Thornbrough v. Columbus & Greenville RR. Co.	10
Tonkovich v. Kansas Bd. Of Regents	11-13
United States v. Lulac	3
Ziegler v. Jackson	3

STATEMENT OF THE CASE

This case originated in district court on February 4, 2000 and charged the defendants with three federal claims and three state claims of deprivation of procedural and substantive due process, civil conspiracy, reverse sexual discrimination, and intentional infliction of emotional distress. Plaintiff's complaint received no opportunity for discovery or review by the trier of fact. Defendants were granted summary judgment.

Plaintiff filed a timely notice of appeal on February 7, 2001 to the court of appeals. Plaintiff did not receive an opportunity for oral argument and the case was dismissed.

The instant case is timely filed pursuant to 42 U.S.C. § 1983 and § 1985 and the First, Fourth, Fifth, Sixth, Seventh, Eighth, Tenth and Fourteenth Amendments to the Constitution of the United States. Plaintiff also invokes pendant jurisdiction of this court to review certain claims arising under Ohio law, predicated on 28 U.S.C. § 1331 and § 1343. Plaintiff has pled valid and substantive claims and that there are genuine issues of material fact, thus making dismissal inappropriate. This is particularly true when the disputed issues involve questions of motive or intent, tainted and sham procedure, as well as arbitrary and capricious actions of the defendants, as in the instant case. These issues require review by the triers of fact.

STATEMENT OF THE FACTS

The Supreme Court has stated that a tenured professor of a public university has a substantive property right in continued employment. This is uncontested by the defendants.

Plaintiff also claims a liberty interest in his career as an educator of youth. As a holder of both property and liberty interests in continued employment, the plaintiff was entitled to constitutionally adequate procedures prior to his termination. Plaintiff has pled that he was deprived of his property and liberty interests arbitrarily and in violation of due process by procedure used by defendants. A number of significant discrepancies warrant this petition.

It cannot be assumed that the instant case has been afforded justice. Flatly, it has not - **no discovery, no trial, no oral argument, nothing**. There have been several noteworthy mistakes in this case. It is requested that whomever reviews this petition review the plaintiff's briefs in which misapplied laws, flawed decisions, and sham procedures are too extensive to be included herein.

This is a case of wrongful termination by school employees who extensively violated the plaintiff's substantive rights, often in an arbitrary manner. He has pled and given examples of a sham process, of improper motives by decision makers at various stages, and of arbitrary decisions made by the defendants. There are a number of genuine issues of material fact which have been decided improperly.

The plaintiff was sanctioned with the worst possible punishment - termination - for the most mundane and trivial of reasons. The plaintiff did nothing illegal, immoral, and his job performance had never been questioned. **He was fired for "being alone with and counseling a student". Ludicrous!**

Within 24 hours, the student presented to the defendants a letter exonerating the plaintiff of any wrongdoing, in fact praising the plaintiff and his wife for saving the suicidal student's life. The defendants even refused to allow the student to testify, flatly lying to achieve this debacle.

This case was handled unjustly and egregiously as a review of the record will show. The court erred by improperly granting defendants' premature motion for summary judgment in light of several restrictions to said action. The law was not properly applied, not in just one instance or even two, but in numerous instances. In the instant case, there were flaws in the application of constitutional and due process law. In fact, whenever a question arose of interpretation, in every instance, the question was rendered in favor of defendants, often flying in the face of common sense.

Further, decisions in this case have been reflective of the most unconstitutional opinions in venues filled with ambiguous and contrasting viewpoints. Reliance on the original language of our Constitution is well placed and followed here.

ARGUMENTS IN SUPPORT OF PETITION

1. Plaintiff's substantive rights were due Constitutional due process and it was error to grant him substandard and tainted procedure when grievous loss and several disputed issues were implicated.

Plaintiff's substantive rights were due Constitutional due process. Plaintiff was a tenured professor with 20 years service to the defendants. His property right was uncontested.

"Defendants acknowledge an OSU professor who is tenured has a property interest deserving of procedural due process protection" (R.12 at ¶ 12).

To prevail under 42 U.S.C. § 1983 (1979), plaintiff must prove that, 1) he was deprived of a right secured by the "Constitution and laws" of the United States, and 2) that deprivation was by a person acting "under color of law" Adickes v. S.H. Kress & Co., 398 U.S. 144, 150, 90 S.Ct. 1598, 1604, 26 L.Ed2d 142 (1970). Plaintiff has pled and proven both facts.

The Supreme Court has explained that if the right allegedly violated was "clearly established" when the challenged conduct took place, then the defendants should reasonably have been cognizant of it. McCann v. Ruiz (788 F. Supp. 109, 1992). The defendants violated Mr. Anderson's rights, under color of law, ... rights they admit were clearly established.

The Fifth Amendment states that "No person shall be.. deprived of life, liberty, or property, without due process of law." This amendment and the Fourteenth Amendment protect against arbitrary deprivation of both property and liberty interests. The court threatened due process protection created by our Constitution when it denied the exchange of discovery, denied review by the trier of fact, despite blatant deficiencies. The court undermines constitutional intent, twists the plain language of our Constitution, and violates its constitutional duty to protect the substantive rights of citizens.

The Fourth Amendment protects against unreasonable seizure of said property; and furthermore, the liberty protected by the due process clause of the Constitution encompasses an individual's freedom to work and earn a living. Mr. Anderson's

property and liberty rights and his very livelihood were seized and confiscated without just cause and without a warrant. Mr. Anderson had committed no crime. He was not incompetent in his job. In fact, he led the most successful youth program in Ohio. Crimes and incompetence are the acceptable causes of dismissal of a tenured faculty member. They did not apply. What did apply was jealousy and malice pled and supported by evidence (see Argument 2c. motive).

The Eighth Amendment states that there should not be "cruel and unusual punishments inflicted". A suicidal student approached Mr. and Mrs. Anderson and asked them to care. They listened and cared. They did not engage in professional counseling nor break any law, rule, or directive of OSU, etc. .. and yet Mr. Anderson was fired and had his property and liberty interests decimated ... a cruel and unusual punishment indeed! His property and liberty interests are substantive and important rights, the deprivation of which are severe.

Liberty and property are among the great constitutional concepts (Board of Regents v. Roth, 408 U.S. 564, 571, 92 S.Ct. 2701). Mr. Anderson's property right is uncontested. As to his liberty right, OSU announced in their own newspaper that Plaintiff was allegedly involved in a sexual relationship with a minor student. This outright LIE was patently disproved by the student to the defendants well before said announcement (R.27, Exh.4). It cannot seriously be disputed that their action diminished his good name, his reputation, his honor, his integrity, and his ability to find employment as an educator of youth (Id., Exh.2).

Other courts found contrary to the decision in the instant case. As observed in McCann, Id., the court ruled to preclude summary judgment of a professor's substantive due process claim and said professor did not even possess tenure whereas Mr. Anderson did possess tenure. Mr. Anderson's clearly established rights demanded the utmost care.

As observed in Bishop v. Wood, 426 U.S. 341, 96 S.Ct. 2074, 48 L.Ed.2d 684 (1976), the Supreme Court admonished that judicial restraint on a federal court regarding personnel decisions of public agencies does not require slavish deference to a university's arbitrary deprivation of a vested property right.

Slochower v. Board of Education of New York, 350 U.S. 551, 76 S. Ct. 637, 100 L.Ed.692, modified on denial of reh'g, 351 U.S. 944, 76 S.Ct. 843, 100 L.Ed 1470 (1956); Brown v. Texas A&M University, 804 F.2d 327 (5th Cir.1986); United States v. Lulac, 793 F.2d 636 (5th Cir.1986); Ziegler v. Jackson, 638 F.2d 776 (5th Cir. 1981); Green v. Board of Regents of Texas Tech University, 474 F.2d 594 (5th Cir.1973).

The court plainly erred by granting summary judgment in favor of defendants in light of the substantive rights protected by our Constitution. The decision of the court offends the clear language of our Constitution and the principles of due process. This decision cries for correction by this Court.

2. **Genuine issues of disputed material facts preclude summary judgment and genuine issues are best decided by trier of fact. Sham school procedures that dismiss tenured professor preclude summary judgment. Plaintiff was due adequate and reasonably fair hearing in the face of the worst possible sanction for trivial acts. Summary judgment should not be granted when questions of a) tainted and sham procedure, b) arbitrary and capricious deprivation, and c) improper motive and intent, etc. must be decided by a jury.**

Mr. Anderson pled, and supported with evidence, claims of defendants' arbitrary acts. This matter forms the true test of whether his rights had been violated. Astonishingly, the court made decisions that are reserved for the trier of fact.

Without discovery, the court improperly held that the defendants' actions were neither arbitrary nor capricious. A decision made in a self-imposed vacuum! Again, this is a genuine issue of material fact to be decided at trial.

In fact, the defendants have never denied that their actions were arbitrary, and yet no discovery was allowed; no factual development was allowed; no review of evidence by the trier of fact was allowed. The defendants had no substantive reason to fire plaintiff and they arbitrarily and capriciously created banal reasons not even in their policy handbook.

The court clearly invaded the role of the jury in this case. It abused its discretion by acting outside of boundaries established to protect plaintiff's right to bring forth grievances and to share discovery materials that, to a jury, could easily lead to a decision favoring him.

The Fifth Circuit found contrary to the decision in the instant case. In Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Leonard v. Dixie Well Service & Supply, Inc., 828 F.2d 291, 294 (5th Cir.1987) the court held:

> "Summary judgment disposition is inappropriate if the evidence before the court, viewed as a whole, could lead to different factual findings and conclusions. It is not the function of the trial judge, in ruling on a motion for summary judgment, to weigh evidence, assess credibility, or determine the most reasonable inference to be drawn from the evidence. Those are functions of the trier of fact."
>
> Further: "The Supreme Court has not, however, approved summary judgments that rest on credibility determinations ... [and] the Court reminds district judges not to invade the role of the jury."
>
> Plaintiff is entitled to a jury resolution of his claims.

a.b. Sham procedure and arbitrary deprivation

When fact issue exists as to whether a school procedure dismissing tenured professor is a "sham", said issue precludes summary judgment. McCann, Id. The Plaintiff pled and gave evidence of said tainted procedure thus creating genuine issue of material fact. Plaintiff was due adequate notice of the charges against him, the grounds for his dismissal, the opportunity for a fair hearing including opportunity to cross-examination each complaining witness.

Plainly spoken, there were no grounds for dismissal. Neither Mr. Anderson nor anyone else has been shown any written standard of conduct prohibiting his actions. None exists. The defendants cannot and have not produced any such standard in any manual, handbook, or document of any sort. They arbitrarily created the charges of "being alone" and "counseling" a student. These charges are not illegal, immoral, not against any policy or rule.

In fact, within 24 hours, the student presented to the defendants a letter exonerating the plaintiff of any wrongdoing, and further praising Mr. And Mrs. Anderson for saving her life (R.27, Exh.4). The defendants then refused to allow the student to testify, flatly lying to achieve this debacle.

In fact, the defendants withheld all of the complainants except one because they did not want to have the truth revealed. To make the point even clearer, Mr. Anderson denied "counseling" the student and offered proof positive to that effect, this creating another material fact dispute best decided by trier of fact. See further discussion of each example, infra (grounds, notice, witnesses).

Plaintiff was due a "constitutional orange" and instead was given a "school apple" which was riddled with wormholes ... and worms. Due process should not be short-circuited in the face of substantive rights combined with grievous loss.

Plaintiff was due adequate and reasonably fair hearing in the face of the worst possible sanction for trivial acts. Plaintiff was instead afforded tainted and sham procedure with less than minimum requirements.

Further, defendants' decision to terminate plaintiff was null and void. A tenured professor may not be dismissed unless his or her actions seriously impair their effectiveness in meeting teaching, research, or service obligations. Defendants never found that Mr. Anderson's teaching, research, or service obligations would be seriously impaired. They violated the prime guideline of their procedure.

Other courts found contrary to the decisions in the instant case. As observed in Thompson v. Southwest School District (483 F. Supp 1170; W.D. Mo. 1980), a teacher had been suspended for immoral conduct. While her behavior was found to be "immoral", there was no evidence showing that her immoral conduct had affected her teaching performance and her substantive due process claim received litigation. In the instant case, the plaintiff's behavior was not immoral or even claimed to be immoral. Further, no claim was ever made by the defendants that plaintiff's teaching performance was affected. And yet, plaintiff was terminated.

The "due process of law" required for substantive rights is defined right in our Constitution, in the Sixth Amendment, and encompasses all of the following:

1) an impartial jury shall make the decision;
2) the nature and cause of the accusation must be stated;
3) confrontation of witnesses against a citizen is assured;
4) compulsory process for obtaining witnesses is assured;
5) the assistance of counsel is assured.

The Seventh Amendment preserves the right of jury trial.

These rights are also guaranteed by the Preamble to our Constitution ... ".. to ... establish justice, ... and secure the blessings of liberty ...".

All Constitutional foundations support the protection and security of my person and property and abhor the deprivation of same without full due process of law as described therein. Shockingly, this Constitutional "due process of law" was thrown out by OSU; a substitute OSU-designed process was applied; then OSU failed to follow its own process.

Imagine! What if it was YOU? First, your Constitutional rights to a trial and to cross-examine all adverse witnesses, etc. are summarily discarded; then an unconstitutional surrogate is offered in place of the Constitutional protections; OSU then violates its own surrogate process; and finally, OSU and the court claim you received all the process to which you were entitled?! That is patently absurd!

Further, OSU and the court egregiously concur that Mr. Anderson was only entitled to notification and a hearing, and then only badly mishandled versions of these. This is in light of his clearly undisputed property right and his liberty right and all of the genuine issues of material fact disputed in this case. These substantial rights were allegedly afforded the minimum procedural protection by the court, for rights that are weighty.

Our Constitution offers only one variation of "due process of law" which has been severely abridged by both OSU's process and the court's opinion in this case. Some subsequent laws and opinions seem to abridge or dilute the plain language of the Sixth Amendment's due process definition. However, few give the minimum as the only option, especially in light of the substantial rights involved.

For instance, one opinion is that the process to which an individual is entitled under the Fourteenth Amendment is in part determined by the extent to which he may be condemned to suffer grievous loss (Crook v. Baker, 584 F.Supp. 1531 (E.D. Mich. 1984)). Plaintiff has suffered said grievous loss. Procedural protections required in this case should be similar or greater to those in Crook, Id. stated as follows:

1) adequate notice of the charges and evidence against him, given sufficiently in advance of the hearing to allow for adequate preparation of a defense;
2) effective opportunity to be heard and present evidence;
3) opportunity to be meaningfully represented by counsel;
4) effective opportunity to confront all adverse witnesses;
5) opportunity to present evidence to the decision maker;
6) decision based solely on evidence adduced at hearing;
7) an impartial decision maker.

These procedural protections reflect a similarity to the due process defined in our Constitution. Plaintiff has consistently claimed and provided evidence to show that several criteria were aborted, tainted, and otherwise withheld in his case.

With regard to receiving due process, even minor cases of deprivation receive the minimum "notice" and "hearing". Why did Mr. Anderson receive "the minimum", and even then a badly tainted and invalid minimum?

In contrast, the Supreme Court in Goss v. Lopez, 419 U.S. 565, 95 S.Ct., 729, 42 L.Ed.2d 725 (1975), held that due process required that a student facing a suspension of 10 days or less "be given oral or written notice of the charges against him and ... an opportunity to present his side of the story."

A student, facing a 10-day or less suspension, was granted the minimum due process by the Supreme Court. The court's miserly Opinion in this case placed a tenured professor's substantive property right in his livelihood and continuing employment and a liberty right in his career at this same minimum! OSU admits that Plaintiff is "the first OSU professor in contemporary times, if not ever, to have been detenured." (R.12 ¶ 2) This was a unique situation requiring extreme respect for Mr. Anderson's rights.

Defendants gave him only a deficient "notice" and "hearing" and the court had no more respect for his entire career and livelihood than a student's 10-day or less suspension. This is not justice!

The plaintiff claimed the process utilized by the defendants was clearly unfair and a sham. The process was both tainted and insufficient from start to finish with defendants breaking fully half (27 of 54) of their own procedures to violate the plaintiff's interests. The process was insufficient for the gravity of sanction leveled against him and the process was a sham of baseless and metamorphosizing charges.

Firing a tenured professor for "being alone with a student" is patently absurd! The court is required to be mindful to the "extent to which [an individual] may be `condemned to suffer grievous loss.'" Lassiter v. Department of Social Services, 452 U.S. 18, 40, 101 S. Ct. 2153, 2166, 68 L.Ed.2d 640 (1981). Moreover, when the interest deprived is of great significance, the importance of insuring an increasingly error free process RISES, while, correspondingly, concerns about administrative inconveniences to government decrease. See Beitzell v. Jeffrey, 643 F.2d 870, 874 (1st Cir.1981). Plaintiff's substantive property right and liberty right are of great significance. The defendants' deprivation of said rights has caused Mr. Anderson to suffer grievous loss.

1) Grounds: There simply was no rule that prohibited plaintiff's behavior. Defendants arbitrarily came up with "being alone with a student". No standard of conduct existed barring "being alone with a student". Further, there is no standard of conduct barring "counseling a student" and plaintiff offered dispositive evidence refuting said claim. There was no notification that either action was a dismissible offense.

Even the panel admitted that "in absolute terms" the plaintiff had not violated any rule. The plaintiff's willingness to listen to a suicidal student was not prohibited by any law, moral code, policy, rule, mandate or directive. There was no standard of required conduct. That a professor cared enough to listen to a suicidal student should have been lauded, not heinously sanctioned!

2) **Notice**: Defendants did not give valid notice to the plaintiff. They ran a shell game. The issue was originally "misconduct". The complainants have admitted under oath to falsifying the complaint against Mr. Anderson (D. Eyman's sealed depo. 12/3/99 at ¶¶ 53-58). That is correct - **the incident which was called "misconduct" was falsified!**

The defendants KNEW this. There was no misconduct and the plaintiff proved that charge baseless. However, the defendants were relentless in their reckless pursuit of termination. They tried other bogus charges. Each one was proven untrue. By the time of the hearing, they had returned to claiming misconduct, which is what the plaintiff believed he was facing. AFTER the hearing, with zero evidence of misconduct, the defendants dropped that charge, stating "The evidence on this point is unclear and is not part of the university's case" (R.11, Exh.A at ¶ 1).

How convenient, AFTER the plaintiff had spent his time and effort preparing for and addressing said claim and disproving it again!

With the invalidation of the complaint, the matter should have been dropped. Arbitrarily and unfairly, they contrived baseless, sham claims to deprive plaintiff of his livelihood. Proof positive that the complaint was fabricated exists in hundreds of sealed records of the complainants and was to be released during discovery. The court chose to not allow discovery. For the court to help hide the truth is outrageous action and a travesty of justice.

3) **Witnesses**: As observed in Goldberg v. Kelly, 397 U.S. 254, 269, 90 S.Ct. 1011, 1021, 25 L.Ed.2d 287 (1970), the court states: "[i]n almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses."

The defendants made further mockery of the plaintiff's due process rights by withholding the key witnesses - the very same individuals upon whom OSU relied to make the bogus charges. These witnesses would have been forced to further reveal the truth under cross-examination - that no misconduct occurred and their malice, jealousy, and other improper motives would have been exposed.

The lack of opportunity to confront and cross-examine adverse witnesses was especially important here because Mr. Anderson flatly disputed the complaint of misconduct and the complex facts underlying the metamorphosing charges made against him. This due process requirement would have also revealed the conspiracy between defendants Schurtz, Andrews, and Kathy Eyman to deprive the plaintiff of his property and liberty rights and to harass and punish Mr. Anderson's ONLY witness to the events that transpired. Then, they refused to allow that witness to testify, in fact LYING in order to withhold them (Def. Exhibit A at ¶ 15). Justice was purposefully denied at every turn.

c) improper motive and intent

It is plain error to grant summary judgment when questions of motivation and intent must be decided by a jury. In the instant case, the trial judge extensively invaded the role of the jury. The trial judge should not be weighing evidence, assessing credibility, or deciding disputed issues of material fact. The plaintiff pled and affirmed in affidavit examples of improper motive and intent by the defendants - facts that showed that some defendants lied, were jealous, malicious, etc. These issues are for the trier of fact as questions of motive require extra care. The Fifth Circuit and other courts found contrary to the decisions in the instant case.

As observed in Thornbrough v. Columbus & Greenville Railroad Co., 760 F.2d 633, 641 (5th Cir.1985):

> Often, motivation and intent can only be proved through circumstantial evidence; determinations regarding motivation and intent depend on complicated inferences from the evidence and are therefore peculiarly within the province of the factfinder. In reviewing a case on appeal, it is difficult to determine what evidence might legitimately sway the factfinder and hence be material. Thus, if any facts are in dispute, summary judgment is generally inappropriate.

As decided in McCann, Id.: "Burden of party moving for summary judgment is particularly rigorous when disputed issues involve questions of motive or intent."

Summary judgment is an inadequate procedure for sorting out questions of motivation. These issues should be decided by a jury. In Greene v. McElroy, 360 U.S. 474, 79 S.Ct. 1400, 3 L.Ed.2d 1377 (1959) at ¶ 1413-14, the court states:

> Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the government's case must be disclosed ... it is even more important where the evidence consists of the testimony of individuals ... who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment ... This court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, ... but also in all types of cases where administrative ... actions were under scrutiny.

The court improperly decided each and every genuine issue of material fact contrary to law and in a vacuum - without so much as a single exchange of discovery, without allowing a jury to review the issues. Taken collectively, it is impossible to explain why so many laws were misapplied in the instant case. The court's decision is an affront to our Constitution.

Case In Point

Defendants claim Tonkovich v. Kansas Bd. of Regents, 159 F.3d 504 (1998) contains "a nearly identical fact pattern to this case." (Def. Brief at ¶ 28). The defendants defectively argue that Mr. Anderson's case should fail because Tonkovich's did. There are **six critical differences** that clearly show that the defendants actions "shock the conscience" and are arbitrary, capricious, even cruel.

Tonkovich was **1)** sanctioned less for **2)** a more serious charge. He was sanctioned with a one-year PAID suspension for having allegedly had improper sexual relations with a student (Tonkovich at ¶ 505); while Mr. Anderson was FIRED for simply being alone with a student!

Tonkovich **3**) was eventually terminated, but NOT for his actions above, as the defendants have misled the court. He was warned that further complaints could lead to his dismissal. AFTER numerous other students complained (and he cross-examined them ALL), he was terminated (Id. at ¶ 512).

No other students filed complaints on Mr. Anderson and the decision to punish him with the worst possible sanction was irrational and "shocks the conscience".

Tonkovich **4**) received two post-hearing remedies (Id. at ¶ 534), while Mr. Anderson received no post-hearing remedies.

Tonkovich **5**) received official notice that he was charged with alleged sexual misconduct, and he was sanctioned based on that notice. Mr. Anderson received official notice that he was charged with misconduct (R.27, Exh.5) (implying sexual misconduct, of course), but defendants dropped that charge, and then fired him based on different, trite and cosmetic charges - "being alone" and "counseling".

Tonkovich **6**) was **allowed to cross-examine each and every complainant who made any kind of charge against him**, including the student (Tonkovich at ¶¶ 507, 505); while Mr. Anderson **was prohibited from cross-examining ALL complainants except** one (a **non-witness** to the charge!) (R.27, Exhibit 1, item 9).

Further, defendant Ninos **LIED** in order to withhold the student from cross-examination (R.11, Exhibit A at ¶ 1). Proof positive has been pled and indisputable evidence provided.

This capricious behavior is precisely what the Supreme Court decried (Tonkovich at ¶ 528):

> "The Supreme Court has emphasized time and again that [t]he touchstone of due process is protection of the individual against arbitrary action of government ...".

The defendants' actions were unfair, arbitrary, capricious and irrational! The deprivations of Mr. Anderson's rights are crystal clear and the motives of the defendants' transparent.

Please recall that the defense offered this case as what should happen. Plaintiff agrees in regards to the essential criteria discussed in this Petition relevant to Tonkovich's case. Five items are shared infra.

1) Plaintiff should have been able to cross-examine the student and all complainants. Tonkovich had the opportunity to cross-examine each and every complainant (Id. at ¶ 507).
2) Plaintiff should have received "proper notice". According to OSU policy (Faculty Rule 3335-5-04-B-4), "Only allegations stated in the complaint shall be considered at the various stages of deliberation." The complaint (R.27, Exh.5) stated a charge of "misconduct" which the university dropped and then they hypocritically fired Mr. Anderson for trite substitutes!
3) Plaintiff should have received two post-hearing remedies to resolve defendants' twisted process he was forced to endure. He received none.
4) Plaintiff should not have been heinously sanctioned for:
5) a lesser offense. Tonkovich was sanctioned by a one-year PAID suspension for allegedly having sexual relations with a student (Tonkovich at ¶ 511). Mr. Anderson was fired! For a significantly lesser offense, he was fired! This was totally incongruous with the alleged violation.

The defendants were not rational in the manner in which they treated Mr. Anderson. Certainly, this Court can see that Mr. Anderson did not receive a "meaningful" hearing, even by the criteria cited in the defendants' "nearly identical" case.

The actions of the defendants "shock the conscience" and were indeed arbitrary and capricious, fully intended to deprive Mr. Anderson of his constitutional rights under color of state law. The hearing was not "meaningful" in any way, shape, or form. It was a sham .... intended to hide the facts.

3. Immunity is not a defense for school employees who violate, under color of law, clearly established Constitutional rights of which a reasonable person would have known. At three different levels, the Constitution of the United States, as supreme law of land, requires that states be answerable to their own citizens and that a citizen may bring suit against another citizen.

There are **THREE** major issues of accountability versus immunity to be addressed herein.

First, the accountability versus immunity of a state itself. The Articles of our Constitution, as supreme law of the land, require that states be answerable to their own citizens.

Second, the accountability v. immunity of individual citizens acting under color of law. The First Amendment to our Constitution provides that a citizen may bring suit against another citizen.

Third, the accountability v. immunity of individuals who arbitrarily deprive constitutionally protected rights of another. The Fifth Amendment and Fourteenth Amendment both hold accountable anyone who arbitrarily violates clearly established Constitutional rights of which a reasonable person would have known. Immunity is not a defense for school employees who arbitrarily violate said rights. Said behavior was pled and evidence presented to establish genuine issues of disputed material fact intended for review by the trier of fact. In McCann, Id., the court held that university officials could not assert qualified immunity:

> Public university officials could not assert qualified immunity defense against professor's ... substantive due process claim if officials ... did in fact design unfair and tainted review procedure with intention of arranging for his dismissal ... they should have known these actions were in violation of his clearly established constitutional rights.

In response to the first issue, reason dictates that states do not wish to subject taxpayer moneys to frivolous or petty suits. However, to maintain zero accountability to its citizens for severe deprivations of civil rights is nothing more than King George's rule! NOT protection ... BUT oppression!

This is precisely what our Constitution decries. Yes, it is a balancing act, but to pigeon-hole all suits as groundless is judicial laziness and contrary to Constitutional language.

In response to the **second** issue, reason dictates that when a state provides blanket immunity for the acts of individuals in their employ rather than requiring employees to obtain personal liability insurance, they have provided more than allowed by the Constitution.

In response to the **third** issue, there is no reasonable basis to tolerate arbitrary actions of employees who must, by supreme law, be answerable for their acts. They are not to play God nor to seriously harm others capriciously. To help these individuals and ignore their transgressions is simply aiding and abetting constitutional law-breaking.

For some reason, the Eleventh Amendment has served as the panacea for all governmental worries, the escape valve for any responsibility. This is an outrage and a disgrace.

Our Constitution was designed and intended to protect citizens first and foremost from insufferable and unaccountable governments. The court erred by granting immunity to the defendants. The court has aborted the intent of our Constitution.

The issue of immunity is clearly misinterpreted by the defendants and the court. For said entitlement of immunity, they claim total reliance on the Eleventh Amendment and Ohio law. This is incongruous with the facts. In The Constitution of the United States of America: Analysis and Interpretation at ¶ 1427 (appendix), it states:

> "Eleventh Amendment jurisprudence has become over the years esoteric and abstruse and the decisions internally inconsistent one with another and sometimes within the same decision."

Eleventh Amendment language has been misinterpreted to permit immunity for those constitutionally bound to be accountable. This is a true conflict! The defendants cite Edelman v. Jordan, 415 U.S. 651 (1974) as their primary proof that they are immune. They fail to report that said decision was split, with Justice Brennan declaring that he:

".. dissented on the ground that the Eleventh Amendment bars only federal court suits against states by citizens of other states, and that Illinois may not avail itself of the doctrine of sovereign immunity as a bar to an Illinois citizen's claims for retroactive AABD payments."

Clearly, some justices interpret the Eleventh Amendment by its language; some don't. Further, addressing directly the third issue, supra, the fact that there are other opinions contrary to the language of our Constitution does not change the underlying fact that Amendment XI was never intended or worded to "sugar-coat" arbitrary acts which deprive citizens of constitutional rights.

It is imperative that we rely upon the original language in applying this amendment to the instant case. The defendants have selected this case because it is favorable to them, and yet the split decision in Edelman is proof positive of said esoteric and abstruse decisions and internal inconsistencies.

There are always other opinions. However, applying Justice Brennan's opinion in Edelman, none of the defendants in their individual or official capacities may avail themselves of the doctrine of sovereign immunity as a bar to a U.S. citizen's (or an Ohio citizen's) claims for damages.

The clear language of the supreme law of the land, our Constitution, reveals the intentions of our founders in this regard. Our Constitution and our Declaration of Independence were created to **overthrow governmental tyranny and oppression and its disrespect and disregard for the rights of its own citizens.** Deja Vu!

The search for liberty - civil, religious, or personal - became more precious than life. Our Constitution and Declaration clearly point to the **requirement that states be answerable to their own citizens.** Our Declaration of Independence was instituted to protect citizens **from** the government, **NOT** to protect or insulate our government from being answerable to its citizens. Our Declaration is a **condemnation of oppressive government:**

"When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, ..." (a list of governmental

transgressions follow). "In every state of these Oppressions We have Petitioned for Redress in the most humble terms: **Our repeated Petitions have been answered only by repeated injury.** A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.... We have appealed to [our British brethren's] native justice and magnanimity ... **They too have been deaf to the voice of justice and consanguinity.**"

Time only changes the players. OSU and the court have acted like the oppressors of our founders. Our Declaration and the essence of our nation's founding principles include:

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, **That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it** ..."

Mr. Anderson has been undeniably injured by the unjust deprivation and seizure of his property and liberty rights and by the continued deafness and self-righteous indifference displayed by the defendants and the court to said unjust deprivations. This case involves the government's oppressive and cavalier disregard for the rights of one of its own citizens.

This case should be about the establishment of justice as required in the Preamble of our Constitution. It is just the opposite. The instant decision is one in which governmental power, influence, and politics were given deference over truth, justice, and fairness. The Preamble to our Constitution expounds the virtues of justice and liberty. It is crystal clear that **justice and liberty** were primary points in the founding of our nation. The embodiment of the founding principles of our nation is in the articles and amendments of our Constitution. They comprise the supreme law of our land and are indeed applicable to the instant case. As a citizen of the United States, Mr. Anderson is relying upon these principles in presenting his case. The intentions of Constitutional Article III § 2 are clear:

1) to assure that the government would always be answerable to its own citizens;
2) to assure that when a state is a party, the supreme court has original jurisdiction.

Constitutional Article VI, clause 2, assures citizens that our Constitution will be maintained as the supreme law of our land, not to be usurped or abridged by subsequent laws, and certainly not by state laws. Not only were citizens to fight against "any Form of Government (which) becomes destructive of ... certain unalienable Rights", but in our Constitution, Article III § 2, it states ...

> The judicial power shall extend to **all cases**, in law and equity, arising under this Constitution, the laws of the United States, ... **to controversies to which the United States shall be a party**: to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state, ... and between a state, or the citizens thereof, and foreign states, citizens or subjects." It further states that "**In all cases ... in which a state shall be party**, the supreme court shall have original jurisdiction."

This clearly validates that any of the United States may be sued, and further does NOT preclude any state from being sued. The language is clearly antithetic to immunity. The bold portions have never been repealed. Constitutional Article VI, clause 2 clearly states that the:

> "Constitution, and laws of the United States ... made in pursuance thereof;... shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding."

Clearly **state law that immunizes government conduct otherwise subject to suit under section 1983 is preempted by the Supremacy Clause of the Federal Constitution.** This is stated in the Tenth Amendment:

> The **powers not delegated to the United States by the Constitution, nor prohibited by it** to the states, are reserved to the states respectively, or to the people.

Only powers not delegated or prohibited by our Constitution are available for states. Article III § 2 mentions that the United States and individual states will be parties to cases involving controversies and specifically mentions "**all cases in which a state is a party**".

Immunity is NOT available to states because Article III § 2 delegates that government will be parties to cases in law and equity and the Tenth Amendment prohibits states from making laws that restrict or abridge the supreme law, our Constitution.

Therefore, no state law can supersede this governmental accountability to its constituents. The current distortions of our Constitution created to protect states from suit are insufferably ill-conceived and injurious. When you've been "burned" by the government, as the colonists had by England and King George, you want your government to be accountable and responsible; not arrogant ... not immune.

We are a nation that created government to be "**for the people, by the people**", "**with liberty and justice for all**". It was stated clearly in our Declaration that governments are instituted only by deriving their just powers from the consent of the governed. Inflexible state immunity doesn't fit this mold and violates these ideals. The supremacy of our Constitution is clear in the Fourteenth Amendment:

> "All persons born or naturalized in the United States ... are citizens of the United States, and of the state wherein they reside. **No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny any person within its jurisdiction the equal protection of the law.**"

Therefore, **any Ohio law granting immunity, whether absolute or qualified, to school employees, whether public or private, is unconstitutional for claims brought under federal law**, as in the instant case. The First Amendment further clarifies that as a citizen of the United States, Mr. Anderson has the right "**to petition the government for the redress of grievances**".

The Eleventh Amendment, upon which OSU and the court rely, was created to clarify Article III § 2 above, which does allow a citizen to bring suit against their own state. Amendment XI only revokes the rights of certain parties outside a state's jurisdiction, ensuring that states need be answerable only to their own citizens rather than the citizens of another state or country.

The reasonable interpretation of this language is that a state must be answerable to its own citizens, but need not answer to citizens of another state or of a foreign country. To interpret this amendment as a complete divesture of answerability to the citizens of a state, is to reverse and defeat original Article III § 2 of our Constitution and to defile our Declaration of Independence. A review of the Eleventh Amendment reveals language that does NOT grant the intra-state immunity claimed by defendants and the court.

> "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States, **by citizens of another state, or by citizens or subjects of any foreign state.**"

For context and understanding, we must reexamine Article III § 2 of the Constitution:

> "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, ... to controversies to which the United States shall be a party: to controversies between two or more states, **between a state and citizens of another state,** between citizens of different states, between citizens of the same state, ... and between a state, or the citizens thereof, and **foreign states, citizens or subjects.**"

These two bold items, and only these 2 items, are limited by Amendment XI. These are the only portions of Article III § 2 that are affected by the Eleventh Amendment. The balance of Article III § 2 remains extant!

The Eleventh Amendment does not preclude nor limit suits against any of the United States by one of its own citizens. Article III § 2 clearly states that ".. controversies to which the United States shall be a party" are subject to suit. This obviously

includes the "United States of America" as well as the United States individually.

This was not repealed by the Eleventh Amendment. The fact that the bold items are the only portions of Article III § 2 that are restricted by the Eleventh Amendment is illustrated in The Constitution of the United States at ¶ 8. The footnote clarifies that **only the suits between a state and citizens of another state or suits brought by citizens or subjects of foreign states,** would be limited by Amendment XI.

Paragraph 2 of Article III § 2 reinforces the contention that the Eleventh Amendment was never intended, much less worded, to restrict states from being answerable to their own citizens.

"In **all cases ... in which a state shall be party ...** "

Note that this portion of Article III § 2 was NOT repealed nor modified, as illustrated by the lack of mention of limitations by Amendment XI in the aforesaid reference. It remains valid. It is clear that states may be parties to suit and that the Eleventh Amendment, as stated, restricts only citizens outside of a state from bringing suit against said state.

The immunity of states alleged by the court in Amendment XI is incongruous with the retention of "In all cases ... in which a state shall be party ... ". **States shall be parties to lawsuits.** The instant case is between Mr. Anderson, a citizen of the United States and a resident of Ohio versus a state school in Ohio and other citizens (specifically, the defendants). His complaint is therefore consistent with the Constitution. The early courts understood the Amendment for what is was - a ban of suits from citizens outside a state:

".. the early decisions seemed to understand the Amendment ..." (The Constitution of the United States of America: Analysis and Interpretation at ¶¶ 1429.

Later, ambiguous and contrasting viewpoints regarding immunity sometimes led to an expansion of the "immunity" of states which, in turn, abridged the significant property and liberty rights of a citizen as stated in our Constitution. This is a precise description of the instant case.

Reliance on the original language of our Constitution is well-placed and the defendants and court have relied upon unconstitutional opinions.

To address defendants' claim that they are the State of Ohio or agents thereof, our Constitution does NOT provide language which states or implies that a state school shall be considered to be one of the United States, nor does it remotely state or imply that employees of a state school shall be considered to be one of the States.

This generation of tentacles of "growing governmental immunity and the resulting retreating of the rights of citizens" contradicts constitutional language. Any state or federal law that attempts to grant said designation to a school employee, whether federal, state, county, city, or private, ignores the fact that said employees are citizens of the United States first and foremost and subject to Constitutional restrictions and privileges. Defendants claim "qualified immunity"; HOWEVER, the supreme law supercedes any Ohio law granting immunity and **any citizen may be sued by another citizen** and this is clearly stated in Article III § 2:

"The judicial power shall extend to **all cases ... between citizens of the same state ...**".

Mr. Anderson is, first and foremost, a citizen of the United States, entitled to certain rights and privileges. As a citizen, he may bring suit against another citizen of his same state - the defendants. This right is guaranteed under our Constitution and may not be superseded by any state law.

The Eleventh Amendment does not provide an umbrella of protection for states from suits brought by its own citizens, **nor does it address in its language any stated or implied protection specifically of school employees (or even governmental employees) who are, first and foremost, citizens of the United States who are subject to suit.**

The defendants are not entitled to even qualified immunity as Mr. Anderson's right to bring suit against them is also guaranteed by Constitutional Article IV § 2:

> "The citizens of each state shall be entitled to all privileges [such as petitioning for redress of grievances] and immunities of citizens in the several states."

Mr. Anderson is entitled by the language of our Constitution to petition the government for redress of the defendants' deprivation of his property and liberty rights and **to bring suit against other citizens.** The supreme law of the land takes precedence and **the defendants are answerable to his suit. There IS a constitutional remedy for one citizen to sue another.** There is NO stated immunity afforded school employees, public or private, in the language of our Constitution. Therefore, our Constitution **twice** places as preeminent Mr. Anderson's rights to petition the government for redress of his grievances and to sue another citizen, over any alleged immunity that defendants' may claim.

There is NO Federal law in pursuance of our Constitution that grants immunity to OSU or any of its employees over plaintiff's right to sue another citizen.

To emphasize, **any law, Federal or state, granting immunity to a school and/or its' employees, whether absolute or qualified, is unconstitutional, period!**

There is no Constitutional basis for the defendants' cry of immunity. OSU and the individual defendants are answerable for their deprivation of a citizen's property and liberty rights as guaranteed repeatedly in our Constitution and as its founders intended.

OSU and its employees, the specified individual citizens, who are defendants in this action, **have no immunity, absolute or qualified, from an Ohio citizen bringing suit against them.** Citizens of one state are clearly allowed to sue citizens of that same state (Article III § 2).

Our Constitution, throughout its language, clearly reflects that a state must be answerable to its citizens and cannot hide behind a cloak of immunity for their deprivations of rights granted by our Constitution. The court's opinion on immunity is contrary to the Constitution of the United States and **no** Ohio law supersedes the supreme law of the land. Any opinions or rhetoric that contradicts this warrants review by the U.S. Supreme Court and, ultimately, the citizens of this country.

In any event, public university officials cannot assert qualified immunity as a defense against a professor's due process claims if the officials did in fact design an arbitrary, unfair or tainted review procedure with the intention of arranging for his dismissal, as alleged and applies herein. They should have known these actions were in violation of plaintiff's clearly established constitutional rights.

Universities rely on "scientific methodology", a precise adherence to steps to be followed in their entirety. They know the importance of following precise steps. To believe that defendants' error-ridden process (27 of 54 steps bumbled) in Mr. Anderson's case was not a sham is naive beyond belief. It is malfeasance.

The defendants knew they were violating Mr. Anderson's constitutional rights. The Supreme Court has explained that if the right allegedly violated was "clearly established" when the challenged conduct took place, then the defendants should reasonably have been cognizant of it (McCann, Id.).

Mr. Anderson's property right was clearly established, well known and even acknowledged by the defendants (R.12 at ¶ 12). The defendants did not want the truth revealed though. In this unique case, a due process hearing according to the language of the Sixth Amendment would have been less burdensome to the defendants than the innumerable contrivances undertaken to suppress the truth and to deprive Mr. Anderson of his rights (i.e., lying to withhold vital witnesses; dropping the complaint and substituting another groundless and banal charge in its place, etc., etc. This latter action (substituting charges) is expressly against their own procedural rules. Defendants could care less. Such are the defective and transparent intentions of the defendants.

The implications of the decision of the court affects all citizens who find themselves subject to governmental deafness and oppression, the same type of treatment our forefathers fought so valiantly to overthrow. For the sake of truth, justice, liberty and honor, this decision must not stand.

CONCLUSION

The instant case falls tremendously short of justice. Plaintiff has pled valid and weighty claims. He has also pled and offered evidence of numerous genuine issues of material fact which, if reviewed by the trier of fact, may well lead to a decision favoring the plaintiff.

Disgracefully, the court decided each and every factual issue in a self-imposed vacuum and did so incompetently in some cases (see plaintiff's brief and reply brief filed in the appellate court record). There were profuse and cogent reasons to allow these issues and claims to be examined by a jury. This case is a tattered shamble of one-sided judgments and it clamors for attention by the Supreme Court and a jury.

Clear errors, misapplications of various laws, incompetent handling of important issues, discovery not allowed, no trial permitted, no oral argument ... nothing. All doors were closed. Justice denied is an understatement!

The collective abridgments of the plaintiff's property and liberty rights are simply impossible to comprehend. Frankly, they are an outrage and an abomination of our Constitution!

The Plaintiff pleads with this Court and implores whoever reads this petition to please be cognizant of and identify with the unfair treatment dealt Mr. Anderson.

He has zero criminal record. He is a staunch community supporter and has been for his entire life. He is a veteran of the Vietnam conflict, honorably discharged. He has been a happily married man for over thirty years to his childhood sweetheart, fathering four children, all of whom have spotless records and are successful in their own right.

Mr. Anderson is a caring and supportive individual who has worked with over 50,000 children over his twenty year career. To find only one delusional and vindictive mother among 100,000 parents with whom Mr. Anderson dealt, may be lucky odds. It was she who brought forth the documented **false** complaint. What IS incomprehensible is the length to which the defendants went to viciously injure Mr. Anderson even after they knew the complaint had been falsified.

Mr. Anderson's excellent character can be attested by literally hundreds of written testimonials as well. He is a member of a collegiate honor society. He is simply not your typical petitioner. He has honestly been mistreated.

He simply asks for your ethical and forthright consideration.

That his rights be treated with respect and justice means the world to this petitioner. Therefore, he ardently petitions this Court to accept jurisdiction of this case and for a Writ of Certiorari.

No. 01-3180

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

DEC - 5 2001

LEONARD GREEN, Clerk

S. CHRISTOPHER ANDERSON,

Plaintiff-Appellant,

v.

OHIO STATE UNIVERSITY, et al.,

Defendants-Appellees.

ORDER

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

Sixth Circuit Rule 28(g) limits citation to specific situations. Please see Rule 28(g) before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court.

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Before: MERRITT, CLAY, and GILMAN, Circuit Judges.

S. Christopher Anderson, proceeding pro se, appeals a district court judgment dismissing his civil rights complaint filed pursuant to 42 U.S.C. §§ 1983 and 1985, and state law. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Seeking monetary and equitable relief, Anderson sued Ohio State University (OSU) and several OSU employees, alleging that: 1) the defendants violated his procedural and substantive due process rights when they revoked his tenure and terminated his employment; and 2) the defendants violated his rights under state law, including subjecting him to gender discrimination, civil conspiracy and intentional infliction of emotional distress. Upon review, the district court concluded that Anderson had failed to state a due process claim, and that it lacked

jurisdiction to consider his state law claims. Hence, the court granted the defendants' motion to dismiss the complaint.

Anderson filed a timely appeal, essentially reasserting his claims. He also maintained that the district court improperly cited to the defendants' post-hearing brief for several factual conclusions (filed following his termination hearing), instead of relying on the hearing panel's decision.

The district court's judgment should be affirmed for the reasons stated therein. This court reviews de novo a district court's dismissal of a complaint for failure to state a claim under fed. R. Civ. P. 12(b)(6). *Jackson v. City of Columbus*, 194 F.3d 737, 745 (6th Cir. 1999).

The district court properly determined that the defendants were entitled to qualified immunity. *Yates v. City of Cleveland*, 941 F.2d 444, 446 (6th Cir. 1991). In general, government officials are entitled to qualified immunity when performing discretionary functions as long as the conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Sova v. Mount Pleasant*, 142 F.3d 898, 902 (6th Cir. 1998). Here, the defendants' conduct did not violate any clearly established statutory or constitutional right, for the reasons explained in more detail below.

Anderson's allegations do not state a procedural due process claim because the defendants provided him with notice of the charges against him and they provided him with an adequate hearing. *Johnston-Taylor v. Gannon*, 907 F.2d 1577, 1581 (6th Cir. 1980). While Anderson argued, in part, that his due process rights had been violated because OSU violated its own rules and procedures, such allegations do not establish a cognizable constitutional violation. *Purisch v. Tennessee Tech. Univ.*., 76 F.3d 1414, 1423 (6th Cir. 1996).

Anderson also did not state a substantive due process claim because he did not sufficiently allege that the defendants conducted his termination proceedings in an arbitrary or capricious manner. *Tonkovich v. Kansas Bd. of Regents*, 159 F.3d 504, 528 (10th Cir. 1998). During his termination hearing, Anderson was permitted to call witnesses and to cross-examine OSU's witnesses. He also has the assistance of counsel during the hearing. Moreover, there were six stages of review before OSU ultimately decided to terminate Anderson's employment. In addition, while Anderson argued that defendants Jones,

Fourman, Schurtz, Bieri, Moser, Andrews and Ninos were biased against him, nothing in the record indicates that these defendants were decision-makers in the termination process following Anderson's panel hearing.

Anderson did not state a claim under § 1985 because his conspiracy allegations are vague, conclusory, and unsupported by any facts or evidence. *Kensu v. Haigh*, 87 F.3d 172, 175-76 (6th Cir. 1996); *Gutierrez v. Lynch*, 826 F.2d 1534, 1538 (6th Cir. 1987). Furthermore, the dismissal of Anderson's conspiracy claims was proper because he did not allege that the defendants were motivated by an intent to discriminate on the basis of race or some other class-based invidiously discriminatory animus. *Wolotsky v. Huhn*, 960 F.2d 1331, 1338 (6th Cir. 1992).

The district court properly dismissed Anderson's state law claims for lack of subject matter jurisdiction. The Ohio Court of Claims Act requires that state law claims brought against state employees in their personal capacities must be filed first in the Court of Claims. *See* Ohio Rev. Code § 2743.02(F); *Haynes v. Marshall*, 887 F.2d 700, 704 (6th Cir. 1989). Anderson does not dispute that he did not first file his state law claims in the Court of Claims.

Finally, we conclude that the district court's erroneous citation to the defendants' post-hearing brief does not warrant reversal of the district court's judgment. The record does reflect that the district court erroneously cited to the post-hearing brief in at least three instances, and attributed the statements to the hearing panel's written recommendation. However, these errors were harmless as the panel clearly concluded that Anderson's actions involving a minor female student constituted grave misconduct and that the misconduct warranted terminating Anderson's employment. Despite the district court's error in this regard, the court properly concluded that Anderson had not stated any claim upon which relief could be granted.

Accordingly, we affirm the district court's judgment. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

Clerk